

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ANTONIO MASSIE, CASE NO. CV-F-00-5248 OWW LJO P

Plaintiff,

ORDER VACATING FINDINGS AND
RECOMMENDATIONS FILED JUNE 27, 2005,
AND PROVIDING DEFENDANTS WITHIN
FIFTEEN DAYS WITHIN WHICH TO FILE A
REPLY

RICHARD EARLY, et al.,

Defendants.

(Doc. 78)

ORDER DIRECTING CLERK'S OFFICE TO
FILE IN OPPOSITION TO MOTION

Plaintiff Antonio Massie (“plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. By order filed May 9, 2005, the court ordered plaintiff to file an opposition or a statement of non-opposition to defendants’ motion to dismiss or for summary judgment within thirty days. On June 27, 2005, after more than thirty days passed and plaintiff failed to comply with or otherwise respond to the court’s order, the court issued a Findings and Recommendations recommending dismissal of this action for failure to obey a court order. On July 7, 2005, plaintiff filed an objection to the Findings and Recommendations. Defendants did not file a response to the objection.

In his objection, plaintiff contends that he served an opposition to defendants' motion on May 24, 2005. Included with the objection is a copy of the opposition.

For reasons that are unclear, the court did not receive plaintiff's opposition served on May 24, 2005. However, good cause having been shown, the court will vacate the Findings and

1 Recommendations and direct the Clerk's Office to file in the copy of the opposition provided by
2 plaintiff in his objection. Because it is unnecessary to backdate the date of filing, plaintiff's request
3 that the filing date be backdated to May 24, 2005 is denied.

4 Based on the foregoing, it is HEREBY ORDERED that:

5 1. The Findings and Recommendations filed on June 27, 2005, is VACATED;
6 2. The Clerk's Office shall file in plaintiff's opposition to defendants' motion to dismiss
7 or for summary judgment; and
8 3. Defendants' reply, if any, is due within **fifteen (15) days** from the date of service of
9 this order.

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11 IT IS SO ORDERED.

12 Dated: August 10, 2005
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13 /s/ Lawrence J. O'Neill
14 UNITED STATES MAGISTRATE JUDGE

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